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11 Number of Pages (including this page)

Date: July 27, 2004

To: Examiner Kandasamy Thangavelu, Group Art Unit 2123

Location: United States Patent and Trademark Office

Fax No.: 571.273.8300

From: Joanna G. Chiu, Registration No. 43,629

Subject: 09/380,854- Supamas Sirichotiyakul (Docket No. SC91051A)

MESSAGE:

Enclosed herewith is a Notice of Appeal for the above-referenced patent application.

ALL ITEMS MARKED WITH AN "X" ARE INCLUDED IN THE FAX

1.	x	1 page Fax cover sheet
2.	X	1 page Notice of Appeal (in duplicate)
3.	X	1 page Fcc Transmittal (in duplicate)
4.	X	1 page Pre-Appeal Brief Request for Review
5.	X	5 page Statement of Reasons for Pre-Appeal Brief Review

Fee(s) charged to Deposit Account 503079, Freescale Semiconductor, Inc. \$500

JUL 27 2005


FEE TRANSMITTAL		0914 Complete if Known	
Patent fees are subject to annual revision <input type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27		Application Number	10/580,854
		Filing Date	May 30, 2000
		First Named Inventor	Suparnas Sirichotiyakul
		Examiner Name	Kandasamy Thangavelu
		Group Art Unit	2123
TOTAL AMOUNT OF PAYMENT (\$)		500	
Attorney Docket No.		SC91051A	

METHOD OF PAYMENT (check all that apply)		FEE CALCULATION (continued)																																																																																																																																																																																																																			
<input type="checkbox"/> Check <input type="checkbox"/> Credit card <input type="checkbox"/> Money Order <input type="checkbox"/> Other <input type="checkbox"/> None <input checked="" type="checkbox"/> Deposit Account: Deposit Account Number: 503079 Deposit Account Name: FREESCALE SEMICONDUCTOR, INC.		3. ADDITIONAL FEES <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>Large Entity</th> <th>Small Entity</th> <th>Fee Code</th> <th>Fee (\$)</th> <th>Fee Code</th> <th>Fee (\$)</th> <th>Fee Description</th> </tr> </thead> <tbody> <tr><td>1051</td><td>130</td><td>2051</td><td>65</td><td></td><td></td><td>Surcharge - late filing fee or oath</td></tr> <tr><td>1052</td><td>50</td><td>2052</td><td>25</td><td></td><td></td><td>Surcharge - late Provisional filing</td></tr> <tr><td>1053</td><td>130</td><td>1053</td><td>130</td><td></td><td></td><td>Non-English specification</td></tr> <tr><td>1012</td><td>2520</td><td>1012</td><td>2520</td><td></td><td></td><td>For filing a request for ex parte Reexamination</td></tr> <tr><td>1804</td><td>920*</td><td>1804</td><td>920*</td><td></td><td></td><td>Requesting publication of SIR prior to Examiner action</td></tr> <tr><td>1805</td><td>1840*</td><td>1805</td><td>1840*</td><td></td><td></td><td>Requesting publication of SIR after Examiner action</td></tr> <tr><td>1251</td><td>120</td><td>2251</td><td>60</td><td></td><td></td><td>Extension for reply within first month</td></tr> <tr><td>1252</td><td>450</td><td>2252</td><td>225</td><td></td><td></td><td>Extension for reply within second month</td></tr> <tr><td>1253</td><td>1020</td><td>2253</td><td>510</td><td></td><td></td><td>Extension for reply within third month</td></tr> <tr><td>1254</td><td>1590</td><td>2254</td><td>795</td><td></td><td></td><td>Extension for reply within fourth month</td></tr> <tr><td>1255</td><td>2160</td><td>2255</td><td>1080</td><td></td><td></td><td>Extension for reply within fifth month</td></tr> <tr><td>1401</td><td>500</td><td>2401</td><td>250</td><td></td><td></td><td>Notice of Appeal</td></tr> <tr><td>1402</td><td>500</td><td>2402</td><td>250</td><td></td><td></td><td>Filing a brief in support of an appeal</td></tr> <tr><td>1403</td><td>1000</td><td>2403</td><td>500</td><td></td><td></td><td>Request for oral hearing</td></tr> <tr><td>1451</td><td>1510</td><td>1451</td><td>1510</td><td></td><td></td><td>Petition to institute a public use proceeding</td></tr> <tr><td>1452</td><td>110</td><td>2452</td><td>55</td><td></td><td></td><td>Petition to revive - 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1204	88	2204	44	* Reissue Independent claims over original patent																																																																																																																																																																																																																	
1205	200	2205	100	* Reissue claim as in excess of 20 and over original patent																																																																																																																																																																																																																	
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1051	130	2051	65	Surcharge - late filing fee or oath																																																																																																																																																																																																																	
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1255	2160	2255	1080	Extension for reply within fifth month																																																																																																																																																																																																																	
1401	500	2401	250	Notice of Appeal																																																																																																																																																																																																																	
1402	500	2402	250	Filing a brief in support of an appeal																																																																																																																																																																																																																	
1403	1000	2403	500	Request for oral hearing																																																																																																																																																																																																																	
1451	1510	1451	1510	Petition to institute a public use proceeding																																																																																																																																																																																																																	
1452	110	2452	55	Petition to revive - unavoidable																																																																																																																																																																																																																	
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1807	130	1807	130	Processing fee under 37 CFR 1.17(g)																																																																																																																																																																																																																	
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1809	790	2809	395	Filing a submission after final rejection (37 CFR § 1.129(a))																																																																																																																																																																																																																	
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SUBMITTED BY Name (Print/Type): Joanna G. Chiu Signature:		Complete (if applicable) Registration No. 43,629 Telephone (512) 996-6839 Date 7/27/05																																																																																																																																																																																																																			

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PTO/SB/23 (07-05)

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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)	
		SC91051A	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450* [37 CFR 1.8(a)] on <u>July 27, 2005</u> Signature _____ Typed or printed name <u>Pat Thomas</u>		Application Number <u>09/580,854</u>	Filed <u>May 30, 2000</u>
		First Named Inventor <u>Supamas Sirichotiyakul</u>	
		Art Unit <u>2123</u>	Examiner <u>Kandasamy Thangavelu</u>
Applicant request review of the final rejection in the above identified application. No amendments are being filed with this request.			
This request is being filed with a notice of appeal.			
The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.			
I am the			
<input type="checkbox"/> applicant/inventor.		Signature	
<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)		<u>Joanna G. Chiu</u> Typed or printed name	
<input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>43,629</u>		<u>(512) 996-6839</u> Telephone number	
<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34 Registration number if acting under 37 CFR 1.34 _____		<u>7.27.05</u> Date	
NOTE: Signatures of all the inventors or assignees of record of the entire interest of their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.			
<input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted			

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JUL 27 2005

DOCKET NO. SC91051A

UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT(S) Supamas Sirichotiyakul GROUP ART UNIT: 2123
APPLN. NO.: 09/580,854 EXAMINER: Kandasamy Thangavelu
FILED: April 27, 2005
TITLE: METHODS FOR ANALYZING INTEGRATED CIRCUITS AND
APPARATUS THEREFOR

Certificate of Transmission under 37 CFR 1.8

I hereby certify that this correspondence is being facsimile
transmitted to the Patent and Trademark Office.

on

7.27.05



Signature

Pat Thomas

Printed Name of Person Signing Certificate

STATEMENT OF REASONS FOR PRE-APPEAL BRIEF REVIEW

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Responsive to the Office Action dated April 27, 2005, and Examiner's comments with
regard thereto, Applicant(s) herewith submit a Pre-Appeal Brief Request for Review and an
accompanying Statement.

STATEMENT

In the current Application, claims 1-29 and 31-44 remain pending. Claims 41, 42, and 44 are rejected under 35 U.S.C. 101. Claims 1-29 and 31-44 are rejected under 35 U.S.C. 102(a).

Rejection of Claims 1-29 and 31-44 under 102(a)

(37 CFR 1.132 Declaration)

The Examiner has rejected claims 1-29 and 31-44 under 102(a) as being anticipated by a publication entitled "Stand-by Power Minimization through Simultaneous Threshold Voltage Selection and Circuit Sizing," (hereinafter referred to as the publication). Applicants, in a response mailed July 19, 2004, submitted a 37 CFR 1.132 declaration, signed by all the inventors of the current Application, to remove this publication as a 102(a) reference. The inventors of the current Application include Supamas Sirichotiyakul, Tim Edwards, Chanhee Oh, Abhijit Dharchoudry, Rajendran Panda, David Blaauw, Judah Adelman, and David Moshe. The publication was authored by Supamas Sirichotiyakul, Tim Edwards, Chanhee Oh, Jingyan Zuo, Abhijit Dharchoudry, Rajendran Panda, and David Blaauw. Therefore, the publication includes, as an author, Jingyan Zuo who is not an inventor of the current application, and does not include as authors Judah Adelman and David Moshe who are inventors of the current Application. The 132 declaration stated that Jingyan Zuo was merely working under the direction of the other authors, and that one or more of the inventors conceived or invented the subject matter disclosed in the publication and relied on in the rejection of the pending claims. The Examiner, in the Office Action mailed November 19, 2004, indicated that this 132 declaration was insufficient because the list of inventors includes Judah Adelman and David Moshe, who are not authors of the publication, and proceeded to state that the applicants have not overcome the "known by others" language of the MPEP. (Applicants assume that the 132 declaration was deemed sufficient by the Examiner to address the issue of Jingyan Zuo, who was listed as an author but is not an inventor on the current patent application.)

In the instant case, the inventive entity of the current Application includes Adelman and Moshe, which were not listed as authors on the publication. While the Examiner is correct in indicating that "others" means any combination of authors or inventors different than the

inventive entity, Applicants submit that the 132 declaration submitted July 19, 2004, is still sufficient to remove the publication as a 102(a) reference.

MPEP 716.10 discusses the use of 37 CFR 1.132 affidavits or declarations to overcome rejections by establishing that the subject matter relied on in the patent or application publication was the invention of the applicant. That is, a reference is no longer applicable if it can be attributed to the applicant, as is the case in the current Application. As stated in the 132 declaration, at least one or more of the inventors conceived or invented the subject matter disclosed in the paper and relied on in the rejection. Thus the subject matter of the reference relied on in the rejection is attributable to the applicants, which include Adelman and Moshe.

Furthermore, MPEP 715.01(c) specifically addresses the situation where the reference is publication of Applicant's Own Invention. This section states that "a rejection based on a publication may be overcome by a showing that it was published *either by applicant himself/herself or on his/her behalf*" (emphasis added). That is, it is quite common for an author or authors to author a paper covering subject matter that is attributable to more than just the authors. In the instant case, the two inventors not listed on the publication were located in Israel, making it easier for them not to contribute to the actual authoring of the paper, even though their ideas may still have been included in the paper by their coworkers (i.e. the listed authors). Therefore, even though they are not listed as authors on the publication, they still may be inventors of the subject matter disclosed in the paper and relied on in the rejection of the pending claims, where the paper was authored on their behalf. It is also possible that Adelman and/or Moshe were not inventors of all or any of the subject matter in the publication. However, it remains clear from the affidavit that the subject matter disclosed in the paper and relied on in the rejection of the pending claims was still *applicants' own work* and thus not the work of another. That is, for the publication to be Applicants' own work, then at least one of the applicants (i.e. one of the eight inventors) had to have conceived or invented the subject matter relied upon for the rejection of each pending claim. The 132 affidavit, signed by all inventors, including Adelman and Moshe, clearly states that the inventorship of the currently pending application is correct and that at least one or more of the inventors conceived or invented the subject matter disclosed in the paper and relied on in the rejection. This should therefore effectively remove the publication as a 102(a) reference by showing that the subject matter relied upon was not the work of another, but of the applicants themselves.

In summary, all of the subject matter disclosed in the publication and relied on in the rejection is attributable to at least one of the applicants. Therefore, the listing of Adelman and Moshe on the currently pending application and not as authors on the publication should not make the 132 declaration insufficient. Since Applicants submit that the 132 declaration effectively removes the primary reference, Applicants submit that all pending claims are allowable under 35 U.S.C. 102(a).

Rejections of Claims 41, 42, and 44 under 35 U.S.C. 101

The Examiner also rejects claims 41, 42, and 44 under 35 U.S.C. 101. However, Applicants believe that each of these claims is directed to statutory subject matter. These claims are directed to "a program, stored on a computer readable medium, that includes a plurality of computer executable instructions, the program comprising: a first plurality of instructions for; a second plurality of instructions for...." These types of claims are patentable under 35 U.S.C. 101. These claims are article of manufacture claims where the program recorded on the computer readable medium has functionally interrelated to the medium. Many patents with this type of language claiming "instructions for" have in fact been allowed by the USPTO. (See, e.g., US6922432, US 6922828, US 6918066, US6876692). Therefore, for at least these reasons, Applicants submit that claims 41, 42, and 44 are patentable under 35 U.S.C. 101.

Conclusion

Applicants respectfully request review of the final rejection. Applicants request that the 132 declaration be found sufficient to remove the publication as a 102(a) reference and request that claims 41, 42, and 44 be found to be patentable under 35 U.S.C. 101.

Applicants respectfully solicit allowance of the pending claims. Contact me if there are any issues regarding this communication or the current Application.

If Applicant has overlooked any additional fees, or if any overpayment has been made, the Commissioner is hereby authorized to credit or debit Deposit Account 503079, Freescale Semiconductor, Inc.

Respectfully submitted,

SEND CORRESPONDENCE TO:

Freescale Semiconductor, Inc.
Law Department

Customer Number: 23125

By: 

Joanna G. Chiu
Attorney of Record
Reg. No.: 43,629
Telephone: (512) 996-6839
Fax No.: (512) 996-6854